

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY E. LOCKE

CIVIL ACTION

99-2137

v.

MEDLAB/GENERAL CHEMICAL

MEMORANDUM

Broderick, J.

February 3 , 2000

Plaintiff Anthony Locke, proceeding pro se, brings this action based upon the Privacy Act, 5 U.S.C. § 552a, and Section 503 of Public Law 100-71, 101 Stat. 391 (1987), against Defendants Med Lab and General Chemical Corporation. Currently before this Court is Defendant General Chemical Corporation's motion to dismiss Plaintiff's complaint pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, and Plaintiff's response thereto. For the reasons that follow, the Court will grant General Chemical's motion and will dismiss the complaint against both Defendants.

This complaint revolves around Plaintiff's efforts to secure an informational packet which accompanied a drug test he had taken. The facts, taken from Plaintiff's complaint, are as follows. Plaintiff alleges that on November 9, 1998, he requested from General Chemical, his former employer, a "litigation package" relating to a drug test he had taken. Plaintiff claims that this request has gone unheeded by General Chemical. Plaintiff further claims that, even though he was told by Defendant MedLab that the package was sent to General Chemical, General Chemical refuses to acknowledge that the package is in its possession. Plaintiff also claims that his name was wrongfully placed on the test. Plaintiff concludes that the conduct of Defendants violated his rights under the Privacy Act, 5 U.S.C. § 552a, and section 503 of Public Law 100-71,

101 Stat. 391 (1987).

In deciding a Motion to Dismiss pursuant to Fed.R.Civ.P. 12 (b)(6), the Court accepts as true all factual allegations contained in the complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. J.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988).

The Court holds the allegations of a pro se complaint to “less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Accordingly, the Court will allow a pro se litigant the opportunity to offer supporting evidence of his allegations unless it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Id.

Under section 552a of the Privacy Act, an individual may bring a civil action against an agency of the United States Government which has failed to comply with a request for records, failed to amend a record as requested, or has failed to maintain accurately any record concerning the individual. 5 U.S.C. § 552a. The Privacy Act further defines the term “agency” by reference to 5 U.S.C. §552f (1) which provides:

For purposes of this section, the term agency . . . includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

Plaintiff has not alleged that either of the Defendants are “agencies” for the purposes of section 552a. The plain language of the statute, as well as case law interpreting it, makes it clear that the Privacy Act is specifically limited to actions against United States government agencies. See Unt

v. Aerospace Corp., 765 F.2d 1440, 1447-48 (9th Cir. 1985) (holding private corporation which does business with government is not an “agency” under the Privacy Act); see also United States v. Miller, 643 F.2d 713, 715 n.1 (10th Cir. 1981) (noting national bank not “agency” for purposes of Privacy Act). Because neither of the Defendants are federal government agencies, they cannot be sued under the Privacy Act.

Plaintiff’s claims against Defendants based upon section 503 of Public Law 100-71 are similarly without merit. Section 503 is part of a Congressional appropriations bill that sets forth the standards necessary for the federal government to appropriate funds for federal agencies for the drug testing of federal employees. As has heretofore been stated, neither of the Defendants are federal agencies. Moreover, Section 503 does not provide any private right of action for individuals. Therefore, the Court will grant Defendant General Chemical’s motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12 (b)(6).

The Court will also dismiss Plaintiff’s complaint against Defendant MedLab because Plaintiff has also failed to state any claim against this Defendant upon which relief could be granted. “It is well established that, even if a party does not make a formal motion to dismiss, the court may, *sua sponte*, dismiss the complaint where the inadequacy of the complaint is clear.” Michaels v. State of New Jersey, 955 F.Supp. 315, 331 (D.N.J. 1996); see also Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980).

An appropriate Order follows.

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ORDER

AND NOW, this 3rd day of February, 2000; Defendant General Chemical having filed a motion to dismiss Plaintiff's claims pursuant to Fed.R.Civ.P. 12 (b)(6) and Plaintiff's having responded thereto; for the reasons set forth in this Court's accompanying memorandum of this date;

IT IS ORDERED: Defendant General Chemical's motion to dismiss Plaintiff's claims pursuant to Fed.R.Civ.P. 12 (b)(6) (Docket No. 4) is **GRANTED**; and because Plaintiff has also failed to state any claim upon which relief can be granted against Defendant MedLab, Plaintiff's complaint is **DISMISSED** as to both Defendants.

RAYMOND J. BRODERICK, J.